

# Decision Notice



Decision 114/2011 Mr Peter Cherbi and the Scottish Legal Complaints Commission

Resignation of the former Chief Executive Officer

Reference No: 201100203  
Decision Date: 9 June 2011

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**Kevin Dunion**  
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## Summary

Mr Cherbi asked the Scottish Legal Complaints Commission (the SLCC) for information relating to the resignation of its former Chief Executive Officer (CEO). With the exception of a press statement issued by the SLCC following the CEO's departure, the SLCC withheld the information under a number of exemptions in the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mr Cherbi remained dissatisfied and applied to the Commissioner for a decision.

After investigation, the Commissioner found that the SLCC had generally complied with Part 1 of FOISA in dealing with Mr Cherbi's request. He found that most of the information had been correctly withheld under section 38(1)(b) of FOISA, while other information had been correctly withheld under section 30(b)(ii) of FOISA. However, some information had been wrongly withheld under both exemptions, and the Commissioner ordered its disclosure.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 30(b)(ii) (Prejudice to effective conduct of public affairs); 38(1)(b), (2)(a)(i) and (b) (Personal information)

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions) (definition of personal data); 2(e) (Sensitive personal data) and Schedules 1 (The data protection principles) (the first data protection principle); 2 (Conditions relevant for purposes of the first principle: processing of any personal data: condition 6) and 3 (Conditions relevant for purposes of the first principle: processing of sensitive personal data) (paragraphs 1 and 5)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 16 August 2010, Mr Cherbi wrote to the SLCC to request information concerning the resignation of its former CEO.



2. On 6 September 2010, the SLCC provided Mr Cherbi with a copy of a published statement about the CEO's departure. The SLCC advised Mr Cherbi that it was withholding all other information. It took the view that much of the information was personal data exempt from disclosure under section 38(1)(b) of FOISA. Other exemptions had also been applied to certain parts of the information (section 30(b)(i) and (ii) and (c), section 33(1)(b), and section 36(1) and (2) of FOISA).
3. The SLCC explained why each of these exemptions was considered to apply, and (where relevant) why it considered that the public interest in maintaining the exemption outweighed the public interest in disclosure.
4. On 8 September 2010, Mr Cherbi wrote to the SLCC to request a review of its response. After carrying out a review, the SLCC advised Mr Cherbi on 21 September 2010 that it upheld its original decision. However, when Mr Cherbi subsequently applied for a decision from the Commissioner, it was discovered that his request for review of 8 September 2010 was not valid in terms of section 20(3)(c)(ii) of FOISA, as he had not specified why he was dissatisfied with the response received from the SLCC. After some correspondence between the Commissioner's office, the SLCC and Mr Cherbi, Mr Cherbi submitted a fresh request for review on 17 February 2011. He expressed dissatisfaction with the decision to withhold all information and explained why he believed disclosure would be in the public interest.
5. On 14 March 2011, the SLCC provided its response to Mr Cherbi's request for review. After considering his arguments, the SLCC decided to maintain and support its original decision to withhold the information covered by his request.
6. On 15 March 2011, Mr Cherbi wrote to the Commissioner, stating that he was dissatisfied with the way in which the SLCC had dealt with his request, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. He stated that he was not seeking the disclosure of any personal information relating to the former CEO, but sought to investigate the impact that her absence had had on the SLCC. He also wished to establish whether enquiries made by the Cabinet Secretary for Finance had played any part in the resignation of the former CEO.
7. The application was validated by establishing that Mr Cherbi had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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8. On 16 March 2011, the SLCC was notified in writing that an application had been received from Mr Cherbi and was asked to provide the Commissioner with any information withheld from him. The SLCC responded with the information requested and the case was then allocated to an investigating officer.



9. The investigating officer subsequently contacted the SLCC, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the SLCC was asked to justify (with particular reference to the requirements of the exemptions claimed earlier) its reliance on any provisions of FOISA it considered applicable to the information requested. The SLCC was also asked to review whether it held any other information which might be covered by the terms of Mr Cherbi's request.
10. On 3 May 2011, the SLCC provided the Commissioner with its submission in relation to Mr Cherbi's application for a decision. The SLCC's arguments are considered in the next section of this decision.

## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Cherbi and the SLCC and is satisfied that no matter of relevance has been overlooked.

### Section 38(1)(b) of FOISA

12. The SLCC advised the Commissioner that it had withheld all information covered by Mr Cherbi's request under section 38(1)(b) of FOISA.
13. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), exempts information if it is personal data and if its disclosure to a member of the public otherwise than under FOISA would breach any of the data protection principles set out in Schedule 1 to the DPA.
14. The exemption in section 38(1)(b) is an absolute exemption, not subject to the public interest test laid down by section 2(1)(b) of FOISA.

### *Is the information personal data?*

15. Personal data is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in the Appendix).



16. Included among the withheld information are minutes of private meetings of the SLCC Board, (only parts of which fall within the scope of Mr Cherbi's request). The Commissioner does not accept that some of the information in these documents is personal data, finding that it relates to the performance or working arrangements of the SLCC as an organisation and not to the former CEO. The information in question is contained in item 3 of the minute dated 21 December 2009, and items 3.2 and 3.3 of the minute of 18 January 2010. Because it is not personal data, the Commissioner finds that this information is not exempt from disclosure under section 38(1)(b) of FOISA.
17. However, the remainder of the information withheld either includes direct reference to the former CEO or clearly forms part of an exchange of correspondence about arrangements for her departure from the SLCC. The Commissioner is satisfied that this information relates to a living individual who can be identified from that information, and that it is therefore personal data as defined in section 1(1) of the DPA. The Commissioner will go on to consider whether this information is exempt from disclosure under section 38(1)(b) of FOISA.

*Would disclosure breach the first data protection principle?*

18. The SLCC argued that disclosure of the information requested by Mr Cherbi would breach the first data protection principle, which requires that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met.
19. The Commissioner considers that some of the personal data which has been withheld falls within the definition of sensitive personal data in terms of section 2(e) of the DPA (information as to the data subject's physical or mental health or condition). He will first consider whether there are any conditions in Schedule 3 which would permit the sensitive personal data to be processed. The processing under consideration in this case is disclosure of personal data into the public domain in response to Mr Cherbi's information request.
20. The Commissioner's guidance on the section 38 exemption<sup>1</sup> identifies that, in practical terms, there are only two conditions in Schedule 3 that would allow sensitive personal data to be processed in relation to a request for information under FOISA, namely:
  - Condition 1 – the data subject has given explicit consent to the release of the information; or,
  - Condition 5 – the information contained in the personal data has been made public as a result of steps taken deliberately by the data subject.
21. The Commissioner has noted that neither condition 1 nor condition 5 of Schedule 3 apply here. Having considered all of the other conditions, the Commissioner found none to be relevant in the circumstances of this case.

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<sup>1</sup> <http://www.itspubliknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&sID=133>



22. The Commissioner has therefore concluded that there are no conditions in Schedule 3 to the DPA which would permit the sensitive personal data to be disclosed. Because there are no conditions in Schedule 3 which can be fulfilled, the Commissioner must find that the disclosure of the information would breach the first data protection principle and, consequently, the information is exempt from disclosure in terms of section 38(1)(b) of FOISA, as read with section 38(2)(a)(i) or (b).
23. The Commissioner will go on to consider the remaining (non-sensitive) personal data, to establish whether any of the conditions in schedule 2 to the DPA would permit lawful disclosure of this information to Mr Cherbi.

*Can any of the conditions in Schedule 2 to the DPA be met?*

24. When considering the conditions in Schedule 2, the Commissioner notes Lord Hope's comment in *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47<sup>2</sup> that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information, but rather to protect personal data from being processed in a way that might prejudice the rights and freedoms or legitimate interests of the data subject.
25. The Commissioner considers that condition 6 of Schedule 2 of the DPA would appear to be the only condition which might permit disclosure of the personal data requested by Mr Cherbi. Condition 6 allows personal data to be processed if the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
26. There are a number of different tests which must therefore be satisfied before condition 6 can be met. These are:
- Does Mr Cherbi have a legitimate interest in obtaining the personal data?
  - If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subject (i.e. the former CEO)?
  - Even if the processing is necessary for Mr Cherbi's legitimate purposes, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject?
27. There is no presumption in favour of the release of personal data under the general obligation laid down by FOISA. Accordingly, the legitimate interests of Mr Cherbi must outweigh the rights and freedoms or legitimate interests of the data subject before condition 6 will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that the SLCC was correct to refuse to disclose the personal data to Mr Cherbi.

<sup>2</sup> <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm>



*Does Mr Cherbi have a legitimate interest?*

28. There is no definition within the DPA of what constitutes a “legitimate interest”, but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. In his published guidance on section 38 of FOISA<sup>3</sup>, the Commissioner states:
- “In some cases, the legitimate interest might be personal to the applicant– e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as scrutiny of the actions of public bodies or public safety.”*
29. In his application to the Commissioner, Mr Cherbi explained that he was seeking to investigate the impact that the former CEO’s absence had had on the SLCC, its policies, undertakings and work. In a later submission, he argued that he had a legitimate interest in the requested information as he was one of only a handful of journalists in Scotland reporting on issues concerning the SLCC and consumer or public interest matters.
30. Mr Cherbi stated that when the former CEO had been recruited, she had been quoted in several articles and publications on how she would handle the role and meet challenges at the SLCC. In Mr Cherbi’s view, the SLCC did not appear to have achieved any of its aims during her tenure. He stated that there had been very little reference to her resignation other than the press release issued by the SLCC itself, and he believed that there was a public interest in understanding more about the SLCC’s lack of progress during this time, and more about the resignation of the former CEO.
31. The Commissioner accepts that Mr Cherbi has demonstrated a legitimate interest in personal data which would allow greater understanding of the extent to which the former CEO’s absence and resignation affected the SLCC as an organisation.
32. The Commissioner has accepted that Mr Cherbi, as a journalist and campaigner, has a legitimate interest in the disclosure of information which, he believes, would serve the public interest in ensuring accountability for public spending.

*Is disclosure of the information necessary for Mr Cherbi’s legitimate interests?*

33. The Commissioner then considered whether disclosure of the withheld personal data was necessary to achieve Mr Cherbi’s aims, or whether those aims could be achieved by means which would interfere less with the privacy of the data subject.

<sup>3</sup> <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&sID=133>



34. In relation to the performance of the SLCC, the Commissioner notes that the SLCC website provides quarterly and annual statistics about the number of complaint cases it deals with, while its annual report (also on its website) provides further information about the SLCC's performance and the challenges faced in the previous year. However, the Commissioner accepts that the information available does not show in any detail whether or to what extent the former CEO's absence and resignation affected the SLCC's policies, work and performance.
35. The Commissioner can identify no viable means of meeting Mr Cherbi's legitimate interests which would interfere less with the privacy of the data subject than the provision of personal data withheld by the SLCC. In the circumstances, he is satisfied that disclosure of those personal data is necessary to meet the legitimate interests previously identified.

*Would disclosure cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject?*

36. In considering the rights, freedoms and legitimate interests of the data subject (the former CEO), the SLCC advanced certain arguments as to that individual's expectation of privacy. The SLCC argued that the former CEO had no expectation that the information would be disclosed [ ].
37. The SLCC acknowledged that the UK Information Commissioner, who is responsible for data protection matters, has issued guidance which states that it is less likely to be unfair to disclose information about a senior officer. However, it noted that the Commissioner's guidance also states that information about an individual's private life deserves more protection than information about them acting in an official capacity. In this case, the SLCC believed that the information related to the private life of the former CEO rather than her working life.
38. The Commissioner has already found the personal data relating to the former CEO's state of health to be sensitive personal data, exempt from disclosure. He does not accept that the personal data remaining to be considered in this part of the decision notice relates only to the private life of the former CEO, as it concerns her working life and conditions of employment. However, the Commissioner accepts that there is often an overlap between working life and private life. As he found in *Decision 093/2011 Mr Paul Hutcheon of the Sunday Herald and the Scottish Ministers*:

"...an individual's performance at work also relates to private matters, including their skills, strengths and weaknesses, and other factors which contributed to their performance over the relevant period... The Commissioner recognises that employees at all levels of seniority within both the public and private sectors would reasonably expect such information to remain private."

The Commissioner takes the view that the remaining personal information withheld in this case relates to both the private life and the working life of the former CEO.





39. The Commissioner has weighed up Mr Cherbi's legitimate interests in the withheld information against the rights, freedoms and legitimate interests of the former CEO. As noted previously, unlike FOISA, there is no presumption in the DPA that disclosure is in the public interest. The Commissioner must be satisfied that Mr Cherbi's legitimate interests outweigh the former CEO's legitimate interest in keeping her personal data private.
40. The Commissioner accepts that the seniority of the former CEO must be taken into account in balancing her right to privacy against Mr Cherbi's legitimate interests in disclosure of her personal data. During her tenure, she was accountable for the performance of the SLCC, which makes it a matter of some public interest that she was absent from her responsibilities for an extended period and ultimately resigned. However, having considered the nature of the information withheld, the Commissioner takes the view that disclosure of the withheld personal data would be a significant intrusion into matters which the former CEO might reasonably expect to be kept private, even taking into account the position of seniority she occupied.
41. The Commissioner is not satisfied that there is a strong case to be made for disclosure of the withheld personal data. The Commissioner does not believe that the withheld information would greatly increase public understanding of the effect that the former CEO's absence had on the SLCC as an organisation.
42. In the circumstances, and having considered the nature of the information withheld, the Commissioner has concluded that disclosure of the remaining personal data would be disproportionately intrusive in terms of the limited public benefit likely to result from disclosure, and such disclosure would therefore cause unwarranted prejudice to the rights, freedoms and legitimate interests of the former CEO. That being so, the Commissioner finds that condition 6 in schedule 2 of the DPA is not met.
43. Since the Commissioner has found that no condition in Schedule 2 of the DPA can be met, it follows that disclosure of the personal data under consideration would breach the first data protection principle. Accordingly, he accepts that the information is exempt from disclosure under section 38(1)(b) of FOISA.
44. Having found this information to be exempt from disclosure under section 38(1)(b), the Commissioner is not required to consider any other exemptions applied by the SLCC.

#### **Information from the Board minutes – section 30(b)(ii) of FOISA**

45. As noted in paragraph 16, the Commissioner has found that certain information in the minutes of SLCC Board meetings were wrongly withheld under section 38(1)(b) of FOISA; this information being item 3 of the minute dated 21 December 2009, and items 3.2 and 3.3 of the minute of 18 January 2010. The SLCC also applied the exemption in section 30(b)(ii) of FOISA to this information.
46. In order for the SLCC to rely on the exemption laid down in section 30(b)(ii) of FOISA, it must show that the disclosure of the information would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.



47. The SLCC argued that access to the information had been restricted to Board members, and that the views recorded were provided in the expectation that they would not be shared outside the private deliberations taking place. The SLCC argued that if the information was released and the privacy of the forum was lost, the Board members and other affected individuals would be substantially inhibited in providing their views freely and frankly to one another. The SLCC considered it essential that its Board Members were allowed a private forum in which to present free and frank views, to consider the free and frank views of others, and to deliberate freely and frankly on the views expressed in order to reach a decision on sensitive matters.
48. The SLCC explained why it regarded the withheld information as extremely sensitive. It argued that disclosure would result in substantial inhibition which would affect the SLCC's ability to carry out its functions. Disclosure would have an adverse impact on the candid discussion of business matters. Given the expectations of those expressing views and the subject matter of those views, the SLCC considered that the inhibition that would result from disclosure would be real, actual and significant, and that the harm caused would at the high level required to meet the test of 'substantial inhibition'.
49. The Commissioner recognises that the arguments put forward by the SLCC were applied to a wide range of information, some of which was extremely sensitive in nature. However, because much of this information has already been found to be exempt from disclosure under section 38(1)(b) of FOISA, in this decision notice he will consider the arguments supporting the exemption in section 30(b)(ii) only as they relate to the information in item 3 of the minute dated 21 December 2009, and items 3.2 and 3.3 of the minute of 18 January 2010.
50. The Commissioner takes the view that the information under consideration is much less sensitive than the majority of the information to which the exemption in section 30(b)(ii) was originally applied by the SLCC. He notes that the matters under discussion relate to a situation which is no longer current, and takes the view that the degree of inhibition caused by disclosure would be considerably less at the time of Mr Cherbi's request for review than at the time the information was recorded. For the most part, the Commissioner does not accept that the exemption in section 30(b)(ii) is engaged in relation to the information withheld.
51. However, the Commissioner makes an exception for the second sentence in paragraph 3.2 of the minute of 21 December 2009, because of the potentially sensitive nature of the information communicated here in a free and frank manner in a context which would have given rise to some expectation of confidentiality on the part of those participating in the discussion (a special meeting of Board members). He accepts that disclosure of this information would, or would be likely to inhibit substantially the free and frank exchange of views for the purposes of deliberation, and that the exemption in section 30(b)(ii) of FOISA is engaged.
52. The exemption in section 30(b)(ii) is subject to the public interest test in section 2(1)(b) of FOISA. Where this exemption is found to have been correctly applied, the Commissioner must consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption in section 30(b)(ii).



53. As noted previously, Mr Cherbi has argued that there is a public interest in disclosure of information which would show how the former CEO's absence affected the SLCC in carrying out its duties and functions. He also identified a public interest in information which would show whether enquiries made by the Cabinet Secretary for Finance had played any part in the resignation of the former CEO, or which would improve accountability for the use of public money in relation to the settlement awarded to the former CEO.
54. Given the nature of the information under consideration (the second sentence in paragraph 3.2 from the minute of 21 December 2009), the Commissioner considers only the first of these interests to be relevant to his decision; that is, the public interest in information which would show how the SLCC was affected by the long absence of the former CEO.
55. The SLCC argued that the public interest in maintaining the exemption outweighed any public interest in disclosure. If Board members were to be substantially inhibited from free and frank discussion of the type of issues involved in this case, the Board's ability to make informed, objective and effective decisions and to obtain the necessary input and/or approval would be compromised. The SLCC felt that this would clearly be contrary to the public interest.
56. The Commissioner accepts that the public interest in enabling Board members to continue to have free and frank discussions, where required, outweighs the public interest in disclosure of the information in question (while accepting that its disclosure would add something to public understanding of the impact of the former CEO's absence upon the SLCC). The Commissioner therefore finds that the information under consideration is exempt from disclosure under section 30(b)(ii) of FOISA.

## Conclusion

57. The Commissioner has accepted that most of the information identified and withheld by the SLCC is exempt from disclosure under section 38(1)(b) of FOISA. Some information from the Board minutes was found not to fall under that exemption; that is, item 3 of the minute dated 21 December 2009, and items 3.2 and 3.3 of the minute of 18 January 2010. The second sentence in paragraph 3.2 from the minute of 21 December 2009 was correctly withheld under the exemption in section 30(b)(ii) of FOISA. The remaining information (the information in item 3 of the minute (less the second sentence in paragraph 3.2) dated 21 December 2009, and items 3.2 and 3.3 of the minute of 18 January 2010) was found not to be exempt under section 38(1)(b) or section 30(b)(ii) of FOISA, and should be disclosed, along with the relevant paragraph headings.



## DECISION

The Commissioner finds that the Scottish Legal Complaints Commission (the SLCC) generally complied with Part 1 (and in particular section 1(1)) of FOISA in responding to the information request from Mr Cherbi.

The Commissioner finds that the SLCC complied with Part 1 of FOISA by withholding certain information under sections 38(1)(b) and 30(b)(ii) of FOISA. However, these exemptions were not upheld in relation to a small amount of the information withheld.

The Commissioner requires the SLCC to provide Mr Cherbi with the information which he found not to be exempt from disclosure, as described in paragraph 57 of this decision notice, by 1 August 2011.

## Appeal

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Should either Mr Cherbi or the SLCC wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**9 June 2011**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

- (e) in subsection (1) of section 38 –

...

- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.



**30 Prejudice to effective conduct of public affairs**

Information is exempt information if its disclosure under this Act-

...

(b) would, or would be likely to, inhibit substantially-

...

(ii) the free and frank exchange of views for the purposes of deliberation;

...

**38 Personal information**

(1) Information is exempt information if it constitutes-

...

(b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

...

(2) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles; or

...

(b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...

(5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;



"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...

## Data Protection Act 1998

### 1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

### 2 Sensitive personal data

In this Act “sensitive personal data” means personal data consisting of information as to—

...

- (e) his physical or mental health or condition,

...

## Schedule 1 – The data protection principles

### Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.



...

**Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data**

...

- 6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...

**Schedule 3 – Conditions relevant for purposes of the first principle: processing of sensitive personal data**

1. The data subject has given his explicit consent to the processing of the personal data.  
...
5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

...